

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

GREGORY LEE WASHINGTON, )  
Petitioner, ) No. CV 15-7401-VAP(AJW)  
v. )  
PEOPLE OF THE STATE OF ) MEMORANDUM AND ORDER DISMISSING  
CALIFORNIA, ) PETITION WITHOUT PREJUDICE  
Respondent. )

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Petitioner filed a document entitled "Application for an Extension of Time to File Petition for Writ of Habeas Corpus," in which petitioner explains that he has limited access to the prison law library and difficulties making copies of legal documents. He requests additional time to file a petition in this Court. Liberally construing the document as a petition for a writ of habeas corpus, it is subject to summary dismissal.

As pleaded, the petition does not present any claims for relief, let alone state whether petitioner has exhausted his state remedies with respect to any potential claim. See 28 U.S.C. §2254(b)(1)(A) ("An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted

1 unless it appears that the applicant has exhausted the remedies  
 2 available in the courts of the State.").

3 To the extent that petitioner might seek application of statutory  
 4 or equitable tolling to any future federal petition he may elect to  
 5 file, see 28 U.S.C. §2244(d)(2); Holland v. Florida, 130 S.Ct. 2549,  
 6 2562 (2010), such a request is premature. Petitioner has not yet  
 7 filed a proper federal petition challenging his conviction or  
 8 sentence. Further, at this stage, whether the state will raise a  
 9 statute of limitation defense pursuant to 28 U.S.C. §2244(d) if  
 10 petitioner does file a federal petition is purely speculative. The  
 11 timeliness of any federal petition properly filed by petitioner should  
 12 be considered if and when petitioner files such a petition. Thus, the  
 13 issue of petitioner's entitlement to the application of statutory or  
 14 equitable tolling is not ripe for determination.<sup>1</sup>

15 Finally, the petition does not name a proper respondent. A

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<sup>1</sup> Generally, a state conviction is final ninety days after the  
 17 petitioner's petition for review is denied, see Bowen v. Roe, 188 F.3d  
 1157, 1158-1159 (9th Cir. 1999), and a petitioner has one year from that  
 18 date within which to file a federal petition. In addition, this period  
 19 would be extended if petitioner has a properly filed state application  
 for relief pending or is entitled to equitable tolling. See 28 U.S.C.  
 20 §2244(d)(2) (explaining that the one year period does not include any  
 time during which a properly filed state application for relief is  
 21 pending); Carey v. Saffold, 536 U.S. 214, 218-219 (2002) (holding that  
 22 in California, state habeas petitions are "pending" so as to toll the  
 limitation period during the interval between a lower court's  
 23 determination of an initial petition and the filing of a subsequent  
 petition in a higher court); Pace v. DiGuglielmo, 544 U.S. 408, 413-414  
 24 (2005) (state petitions will only toll the one-year statute of limitations  
 under § 2244(d)(2) if the state petition was timely filed under state law  
 and equitable tolling is available only if the petitioner has been  
 25 pursuing his rights diligently but some extraordinary circumstance stood  
 in his way). Based upon the exhibit submitted by petitioner, it appears  
 26 that the California Supreme Court denied his petition for review on  
 September 17, 2014. His conviction would have become final ninety days  
 later - on December 16, 2014 - and petitioner would have until December  
 27 16, 2015 within which to file a federal habeas corpus petition. Because  
 28 the record is incomplete, however, nothing in this order should be  
 construed as expressing an opinion as to the timeliness of this or any  
 future petition.

1 petitioner seeking habeas relief must name as a respondent to the  
2 petition the state officer having custody of the petitioner. Rule  
3 2(a) of the Rules Governing Section 2254 Cases; Belgarde v. Montana,  
4 123 F.3d 1210, 1212 (9th Cir. 1997). "Failure to name the petitioner's  
5 custodian as a respondent deprives federal courts of personal  
6 jurisdiction." Stanley v. California Supreme Court, 21 F.3d 359, 360  
7 (9th Cir. 1994) (per curiam). Typically, the proper respondent is the  
8 warden of the institution in which the petitioner is incarcerated.  
9 Stanley, 21 F.3d at 360. Because petitioner does not name either the  
10 warden of the prison at which he is incarcerated or the Secretary of  
11 the California Department of Corrections and Rehabilitation, the Court  
12 lacks personal jurisdiction over the proper respondent.

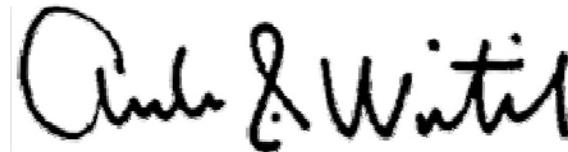
13 Based upon these deficiencies, the petition is dismissed without  
14 prejudice and with leave to amend. Petitioner shall have twenty-eight  
15 (28) days from the date of this order within which to file an amended  
16 habeas petition on the forms provided by the clerk. The amended  
17 petition must name the proper respondent, bear case number CV 15-7401-  
18 VAP(AJW), and set forth each of petitioner's claims for relief. It  
19 also must indicate whether each claim has been presented to the  
20 California Supreme Court.

21 Petitioner is cautioned that failure to timely comply with this  
22 order will result in dismissal of this action without prejudice.

23 **It is so ordered.**

24  
25 Dated: October 27, 2015

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27 Andrew J. Wistrich  
28 United States Magistrate Judge